

Implementation of P3: Navigating the Legal and Political System to Capture Projects with the Governors and Mayors

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Items For Discussion

- Predicting the PPP Future – and how to grab it!
- Where are the likely deals – state vs municipal
- What law applies, and what are the politics

- Start with federal scene – Obama vs McCain
 - National Infrastructure Bank
- Look at state PPP law
 - Authority of local government in absence of PPP law.
 - How to submit Unsolicited Proposals
 - Politics Issues.

The Crisis and Opportunity in Funding for Public Project

- 1.6 trillion required on infrastructure projects 2008-2013
- Shrinking public revenues
- Limited grant sources/federal funds
- Infrastructure spending as 6% GDP has declined ½ over last 40 years.
- Growing entitlement costs consuming budgets
- At risk: *transportation, housing, water and wastewater, prison, and alternative energy projects*

Report Card – “D”

State of America's Infrastructure		
SECTOR	2005 GRADE	INVESTMENT NEED
Aviation/Aerospace	D+	\$16 billion/year
Bridges	C	\$9.4 billion/year
Dams	D+	\$10.1 billion/year
Drinking Water	D-	\$11 billion/year
Energy	D	\$493 billion
Hazardous Waste	D	\$1.9 billion/year
Navigable Water Ways	D-	\$125 billion
Public Parks & Recreation	C-	\$6.1 billion
Rail	C-	\$12-\$13 billion/year
Roads	D	\$34.6 billion/year
Solid Waste	C+	\$127 billion
Transit	D+	\$20.6 billion
Wastewater	D-	\$390 billion
Total	D	\$1.6 trillion

Source: American Society of Civil Engineers

What are the Candidates Saying

- Senate floor statement, 7/29/05 (debating final passage of SAFETEA-LU Conference Report)
 - Mr. Obama:...I am pleased that the conference report... protects an important program administered by Department of Transportation[,] the Disadvantaged Business Enterprise Program also known as **DBE** Program.
- Campaign Website (www.barackobama.com, access on 1/23/08):
 - **Reform Federal Transportation Funding:** As president, Barack Obama will re-evaluate the transportation funding process to ensure that smart growth considerations are taken into account. Obama will build upon his efforts in the Senate to ensure that more Metropolitan Planning Organizations create policies to incentivize greater bicycle and pedestrian usage of roads and sidewalks, and he will also recommit federal resources to public mass transportation projects across the country. Building more livable and sustainable communities will not only reduce the amount of time individuals spent commuting, but will also have significant benefits to air quality, public health and reducing greenhouse gas emissions.

What are Candidates Saying (cont'd)

- Campaign Policy Proposal, 6/16/08:
 - In a speech at Flint, Michigan, entitled “Renewing American Competitiveness,” Senator Obama referenced his infrastructure proposal:
 - “A third part of our agenda must be a commitment to 21st century infrastructure. If we want to keep up with China or Europe, we can’t settle for crumbling roads and bridges, aging water and sewer pipes, and faltering electrical grids that costs us billions to blackouts, repairs and travel delays. It’s gotten so bad that the American Society of Civil Engineers gave our national infrastructure a ‘D.’ A century ago, Teddy Roosevelt called together leaders from business and government to develop a plan for 20th century infrastructure. It falls to us to do the same.
 - “As President, I will launch a **National Infrastructure Reinvestment Bank** that will invest \$60 billion over ten years – a bank that can leverage private investment in infrastructure improvements, and create nearly two million new jobs. The work will be determined by what will maximize our safety and security and ability to compete. We will fund this bank as we bring the war in Iraq to a responsible close. It’s time to stop spending billions of dollars a week on a blank check for an Iraqi government that won’t spend its own oil revenues. It’s time to strengthen transportation and to protect vulnerable targets from terrorism at home. We can modernize our power grid, which will help conservation and spur on the development and distribution of clean energy. We can invest in rail, so that cities like Detroit, Chicago, Milwaukee and St. Louis are connected by high-speed trains, and folks have alternatives to air travel. That’s what we can do if we commit to rebuild a stronger America.

What are Candidates Saying (cont'd)

- Senate floor statement, 7/29/05 (debating final passage of SAFETEA-LU Conference Report):
 - “Mr. McCain:...This **monstrosity** of a conference report – which costs an **astounding** \$286.4 billion – is both terrifying in its fiscal consequences and disappointing for the lack of fiscal discipline it represents. What will it take... to make the case for fiscal sanity in Congress?”
- ABC News Republican Debate, 8/05/07 (reacting to the Minneapolis bridge collapse):
 - “McCain: We passed a \$50 billion transportation bill that had \$2 billion in **pork barrel** earmarked projects: \$233 million for a bridge to nowhere in Alaska, to an island with 50 people on it. Not one dime in those pork barrel projects was for inspection or repair of bridges... They were for pork barrel projects [famous]...”
- Discussion with reporters 4/30/08 (New York Times, 5/2/08)
 - In a meeting with reports in Pennsylvania on April 30, Senator McCain discussion the issue of earmarks and his view of their relationship to the Minneapolis I-35W bridge collapse:
 - “The bridge in Minneapolis didn’t collapse because there wasn’t enough money. the bridge in Minneapolis collapsed because so much money was spent on **wasteful, unnecessary pork-barrel projects.**”

Governors From Across Country Join Building America's Future Coalition

NON-PARTISAN COALITION MAKES INFRASTRUCTURE FUNDING A NATIONAL PRIORITY

WASHINGTON, DC – Governors from across the country today declared their support for increasing federal funding to rebuild America's aging infrastructure by joining the *Building America's Future* coalition.

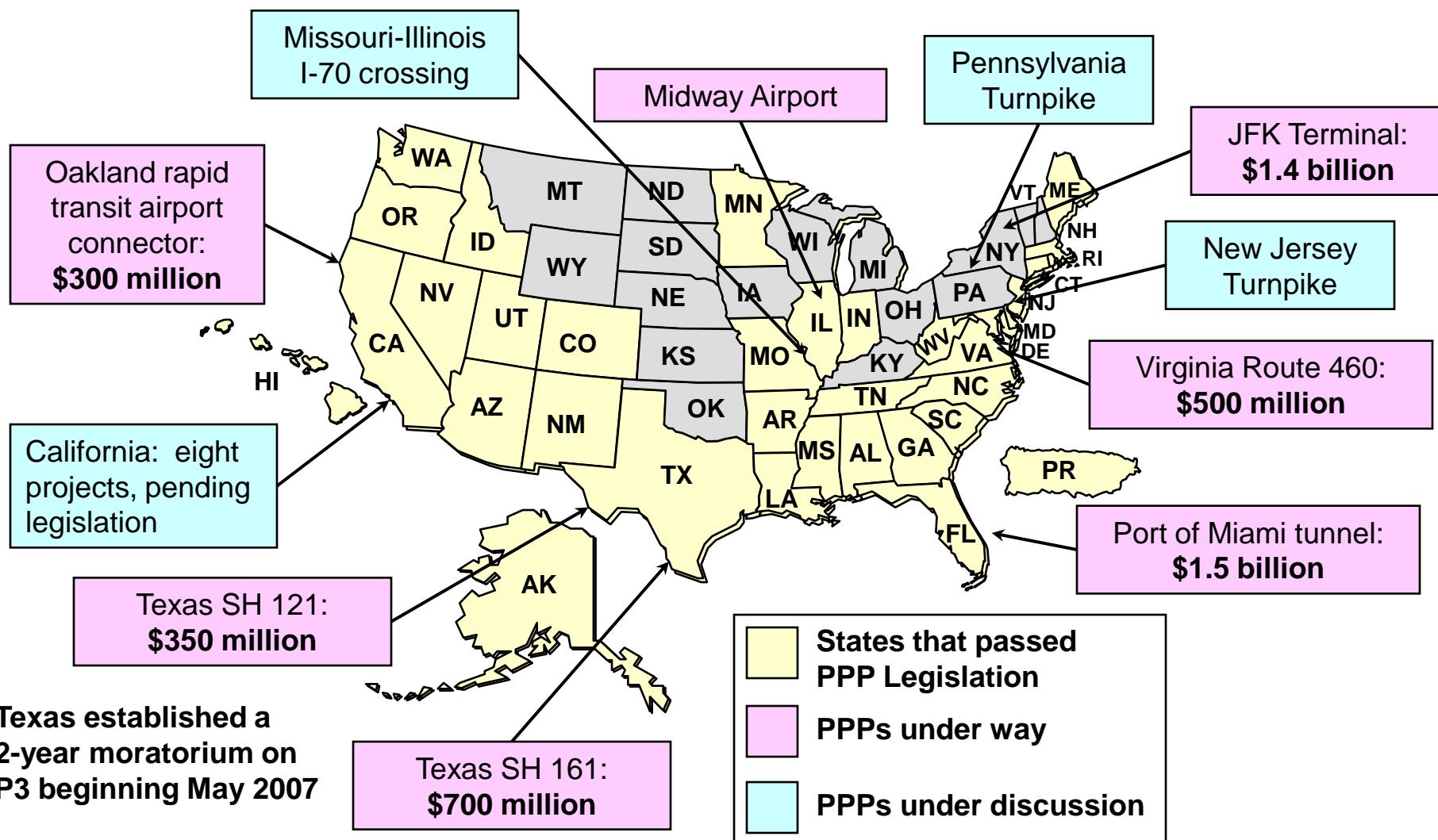
This non-partisan coalition is co-chaired by Pennsylvania Governor Edward G. Rendell, California Governor Arnold Schwarzenegger and New York Mayor Michael R. Bloomberg.

The *Building America's Future* coalition will be comprised of state and locally elected officials from around the nation and will become a repository of best practices on infrastructure funding issues. In short-term, the coalition will work with the presidential candidates and the platform committee of the national political parties to ensure that the next president understands the enormity of the infrastructure crisis and is committed to increasing federal funding.

13 Governors Join Coalition

- Jon Corzine, New Jersey Governor
- Charlie Crist, Florida Governor
- Janet Napolitano, Arizona Governor
- Martin O'Malley, Maryland Governor
- Eliot Spitzer, New York Governor
- Deval Patrick, Massachusetts Governor
- John Baldacci, Maine Governor
- Donald Carcieri, Rhode Island Governor
- Jim Douglas, Vermont Governor
- Christine Gregoire, Washington Governor
- Jennifer Granholm, Michigan Governor
- Tim Kaine, Virginia Governor
- Bill Ritter, Colorado Governor

Over 30 States Have Enacted Laws to Implement P3 Projects



* Texas established a 2-year moratorium on P3 beginning May 2007

What Law Applies

- **General State PPP Legislation**

- Alabama, Alaska, California, Colorado, Delaware, Florida, Georgia, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington.

- **Specific State Legislation**

- Court House Long Beach
- Virginia 2002 Law
 - Education Facility
 - Public buildings
 - Utility and telecommunication
 - Recreation facility

- **No State Legislation**

- Dillions Rule vs Home Rule
- Oregon
- Maine
- North Carolina
- Connecticut
- Alaska

Things That Can Go Wrong – Political and Legal

- Trans-Texas Corridor
 - Political Risk – The Texas House of Representatives imposed a 2 year moratorium on privatization of transportation assets. Lessons Learned – Issues can be non-project specific.
- Chicago Skyway
 - Labor Risk – Toll road employees chose not to work for the new private management team and the City of Chicago had to absorb all toll road employees. Lessons Learned – understand the needs of all stakeholders.
- Black Warrior Parkway Toll Bridge
 - Headline Risk – Alinda project in Alabama is being highly protested due to a \$0.50 increase in tolls. Lessons Learned – Understand citizen threshold.
- Detroit Windsor Tunnel
 - Regulatory Risk – Tunnel opened in early 2001 as a short-cut to Canada. After 9/11 traffic moved slowly due to increased homeland security measures. Lessons Learned – Traffic risks can arise from multiple sources.
- Atlanta Water Privatization
 - Partnership Risk – Concession agreement for the privatization of water was terminated when certain performance measurements were not met. Lessons Learned – Understand the working relationships of partners early in the process.

Selecting the Right Procurement Opportunity

- Governing Legislation—each state differs
 - Prevailing Political Climate—Governor, lawmakers
 - Spheres of Political Influence by Private Entities
 - Agency Track Record
-
- *The Right Team at the Right Time*

It's all about preparation and positioning ...